

9 FAM 41.2 Notes

(TL:VISA-246; 03-27-2001)

9 FAM 41.2 N1 Waiver for Aliens Residing in Canada or Bermuda

9 FAM 41.2 N1.1 Common Nationality Includes Commonwealth Countries and Ireland

(TL:VISA-164; 4-25-97)

The waiver of passport and visa requirements provided by 22 CFR 41.2(b) for permanent residents of Canada or Bermuda who have a common nationality with Canadians or with British subjects in Bermuda, is considered to include citizens of all Commonwealth countries, as well as citizens of Ireland. [See 9 FAM 41.2 Exhibit I.]

9 FAM 41.2 N1.2 Stateless Alien Resident of Canada or Bermuda Not Entitled to Waiver

(TL:VISA-164; 4-25-97)

Permanent residents of Canada or Bermuda who are nationals of one of the countries listed in 9 FAM 41.2 Exhibit I may be granted a waiver of visa and passport requirements. An alien resident of Canada or Bermuda who is the bearer of a certificate of identity or other stateless person's document issued by the government of one of these countries may not benefit from the waiver.

9 FAM 41.2 N2 Waiver for British Subjects Attached to Canadian and British Government Organizations in Canada

(TL:VISA-164; 4-25-97)

British subjects and their families attached to Canadian or British Government organizations in Canada, including the military, though not "permanent residents," may be regarded as nationals of Canada and eligible for the waiver provided under 22 CFR 41.2(a).

9 FAM 41.2 N3 Conditions for Admission of Aliens Under Direct Transit Waiver

9 FAM 41.2 N3.1 Not All Aliens Eligible for Transit Without Visa (TWOV)

(TL:VISA-164; 4-25-97)

8 CFR 212.1(f) is the INS companion regulation to 22 CFR 41.2(i). The privilege of TWOV is not available to certain aliens and is available to certain others only on a limited basis. [See 9 FAM 41.2 Exhibit II.]

9 FAM 41.2 N3.2 Conditions for TWOV

(TL:VISA-164; 4-25-97)

The conditions under which TWOV will be authorized for aliens to whom the privilege of TWOV may be made available without limitation pursuant to 22 CFR 41.2(i) are set forth in INS regulations 8 CFR 214.2(c)(1). [See Exhibit 9 FAM 41.2 Exhibit III.]

9 FAM 41.2 N3.3 Guidelines for Interpretation of 8 CFR 214.2(c)

9 FAM 41.2 N3.3-1 Journey Continued Within 8 Hours

(TL:VISA-2; 8-30-87)

If an alien intends to transit the United States using the same conveyance throughout, the journey must be continued within 8 hours after arrival from foreign territory.

9 FAM 41.2 N3.3-2 Scheduled Stops

(TL:VISA-2; 8-30-87)

The number of times the same conveyance on which the alien is traveling makes scheduled stops after leaving the port of entry is irrelevant, as is the total elapsed time at subsequent stopovers.

9 FAM 41.2 N3.3-3 Change of Transportation

(TL:VISA-2; 8-30-87)

Should the alien find it necessary to transfer to connecting transportation to accomplish the trip, equipment may be changed no more than twice, and the total elapsed on-ground time spent in transferring must not exceed 8 hours. However, if there is no scheduled transportation in that 8-hour period, continuation of the journey thereafter on the first available transport is acceptable. Time spent at the point of entry and at stopovers, for reasons other than for change of equipment, need not be computed in determining whether TWOV is permissible.

9 FAM 41.2 N3.3-4 Scheduled Change of Transportation and 8-Hour Rule

(TL:VISA-2; 8-30-87)

If more than one conveyance is required for transit, the alien must be scheduled to leave the port of entry within 8 hours, and the total amount of time scheduled for stops at points where transfers of equipment occur must be less than 8 hours.

9 FAM 41.2 N3.4 Exception to 8-Hour Rule for Crew Members Joining Vessel or Aircraft

(TL:VISA-187; 03-30-1999)

An exception to the 8-hour rule is provided for crew members arriving in transit to join a vessel or aircraft. Such crew members arriving in transit need not be in possession of a C-1 visa. To qualify for admission in TWOV status, they must have valid D visas, and applicable clearances must have been processed.

9 FAM 41.2 N3.5 TWOV Not Applicable to Cruise Ship Passengers

(TL:VISA-187; 03-30-1999)

Passengers on cruise ships that call at U.S. ports for brief periods and then proceed abroad do not qualify for TWOV status.

9 FAM 41.2 N3.6 Liability of Carrier in TWOV Cases

(TL:VISA-164; 4-25-97)

A carrier bringing aliens to the United States under this provision may be subject to a civil penalty of \$2,000.00 if the alien does not comply with the terms of the regulations. Aliens under the bonded transit waiver may not, under any circumstance, change classification to another nonimmigrant status under INA 248.

9 FAM 41.2 N3.7 TWOV Procedure Does Not Justify Refusal to Accept Visa Application

(TL:VISA-33; 6-29-90)

The consular officer may not use the existence of the TWOV procedure to justify a refusal to accept an application for a transit visa.

9 FAM 41.2 N4 List of Signatory Transportation Lines

(TL:VISA-164; 4-25-97)

See 9 FAM 41.2 Exhibit IV for a list of carriers which have contracts, including bonding agreements, with the Attorney General pursuant to INA 233(c) regarding aliens who are being transported in immediate and continuous transit through the United States. [See also 9 FAM 41.2 Exhibit II for aliens of countries excepted from these contracts.]

9 FAM 41.2 N5 Natives and Residents of Trust Territory of the Pacific Islands Not Proceeding in Direct Transit to the United States

(TL:VISA-187; 03-30-1999)

A native and resident of the Trust Territory traveling to the United States, but not in direct and continuous transit from the Trust Territory, may be issued a nonimmigrant visa without being charged the reciprocity fee. The visa may be valid for a period and number of applications for admission consistent with the traveler's needs. [See 9 FAM PART IV Appendix C under country concerned for the number of applications and validity of visa.] The applicant, however, must pay the MRV fee, which is currently \$45.00.

9 FAM 41.2 N6 Parole Procedure Under INA 212(d)(5)

(TL:VISA-187; 03-30-1999)

Consular officers may answer questions about the relationship between the parole procedure and the regular visa procedure under the INA with a reference to INA 212(d)(5) that contains the statutory authority for the parole procedure. Consular officers shall not give more information in answer to inquiries from the general public, nor shall consular officers suggest parole to an alien or an interested party. In appropriate cases, consular officers may refer inquirers to INS. [See 9 FAM 42.1 N5.]

9 FAM 41.2 N7 Restrictions on British Virgin Islands Nationals Entering U.S. Virgin Islands Under Waiver

(TL:VISA-187; 03-30-1999)

a. A national of the British Virgin Islands, and resident therein, requires a passport, but not a visa if proceeding to the U.S. Virgin Islands.

b. A national of the British Virgin Islands, and resident therein, requires a passport, but does not require a visa to apply for entry into the United States if such applicant:

(1) Is proceeding by aircraft directly from St. Thomas, U.S. Virgin Islands;

(2) Is traveling to some other part of the United States solely for the purpose of business or pleasure as described in INA 101(a)(15)(B);

(3) Satisfies the examining U.S. Immigration officer at that port of entry that he or she is admissible in all respects other than the absence of a visa; and

(4) Presents a current Certificate of Good Conduct issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

9 FAM 41.2 N8 Visa Issuance to Aliens Entitled to Documentary Waiver

(TL:VISA-187; 03-30-1999)

An alien entitled to a waiver of documentation may apply for and receive the type of visa that would otherwise be waived. If a visa is issued notwithstanding the waiver, the consular officer shall make a notation on Form OF-156, indicating that the visa was issued at the request of the applicant.

9 FAM 41.2 N9 K Visa Alien Not Entitled to Nonimmigrant Visa Waiver

(TL:VISA-164; 4-25-97)

An alien qualifying for a K visa as the fiancé or fiancée of a U.S. citizen is not entitled to a waiver of the nonimmigrant visa requirement regardless of circumstances.

9 FAM 41.2 N10 Guam Visa Waiver Program

(TL:VISA-187; 03-30-1999)

The Guam Visa Waiver Program, as authorized by the Omnibus Territories Act of 1986 (Pub. L. 99-396), was implemented on October 1, 1988. The program allows citizens of designated countries to make a temporary visit to Guam provided that they:

- (1) Visit for business or pleasure for a period of not more than 15 days;
- (2) Travel aboard a participating airline;
- (3) Waive any right otherwise provided in the Act to administrative or judicial review, or appeal of an immigration officer's determination of admissibility; and
- (4) Do not apply for an extension of stay, adjustment of status, change of nonimmigrant status, or onward travel to another destination in the United States.

For INS regulations regarding the Guam Visa Waiver Program see 9 FAM 41.2 Exhibit V.

9 FAM 41.2 N11 Visa Waiver Pilot Program (VWPP)

(TL:VISA-187; 03-30-1999)

a. The VWPP was established by section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603). It provided for the visa free entry of nationals of designated countries coming to the United States for tourism or business (B visa purposes) for a period not to exceed 90 days, provided they arrive on a participating carrier and are in possession of a round-trip or onward ticket.

b. The Immigration Act of 1990 (Pub. L. 101-649) removed the eight-country cap and extended the program for the original eight countries as well as any other countries designated by the Secretary of State and the Attorney General until September 30, 1994.

c. The Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416) further extended the program through September 30, 1996 and created a probationary status for participating countries in the Visa Waiver Pilot Program.

d. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104-208) eliminated the joint action requirement by amending the law to allow the Attorney General to act "in consultation with the Secretary of State" rather than "jointly with the Secretary of State" in designating the countries eligible to participate in the program. The program was further extended until September 30, 1997 and repealed section 217(f) which permitted countries to enter the program in probationary status.

e. Public Law 105-173 of April 28, 1998, amended the Immigration and Nationality Act to modify and extend the VWPP through April 30, 2000.

9 FAM 41.2 N11.1 Countries Eligible to Participate in VWPP

(TL:VISA-164; 4-25-97)

The VWPP waives the nonimmigrant visa requirement for admission of certain aliens into the United States for a period not to exceed ninety days. The Attorney General, after consulting with the Secretary of State, is authorized to designate those countries eligible to participate in the VWPP. A list of the countries currently eligible to participate in the VWPP is shown in 9 FAM 41.2 Exhibit VI.

9 FAM 41.2 N11.2 Eligibility Requirements

9 FAM 41.2 N11.2-1 General

(TL:VISA-187; 03-30-1999)

An alien who is a national of a participating VWPP country does not require a visa, provided the alien:

- (1) Is classifiable as a visitor under INA 101(a)(15)(B);
 - (2) Seeks to enter the United States for a period not to exceed 90 days;
 - (3) Possesses a valid passport issued by a VWPP designated country;
 - (4) Completes and signs Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form;
 - (5) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination of admissibility; and
 - (6) Waives any right to contest any action for deportation.
- (7) If arriving by air or sea, arrives on a carrier that has entered into an agreement with the INS to guarantee transport of the alien if found inadmissible or removable. [See 9 FAM 41.2 Exhibit VII for a list of signatory carriers.]

9 FAM 41.2 N11.2-2 Applicants Arriving by Air or by Sea

(TL:VISA-246; 03-27-2001)

VWPP participants *must be arriving by air or sea, must be traveling on a signatory carrier and must have:*

- (1) A round-trip, non-transferable transportation ticket valid for a period of not less than one year;
- (2) Airline employee passes indicating return passage;
- (3) Individual vouchers;
- (4) Group vouchers for charter flights only; or
- (5) Military travel orders (which include military dependents) for return to duty stations outside the United States on U.S. military flights.

9 FAM 41.2 N11.2-3 Applicants Arriving at Land Border Ports-of-Entry

(TL:VISA-164; 4-25-97)

Any alien arriving at a land border port of entry must provide evidence of:

- (1) Financial solvency; and
- (2) A domicile abroad.

9 FAM 41.2 N11.3 Form I-94W Required

(TL:VISA-187; 03-30-1999)

Applicants for entry under the VWPP must complete Form I-94W, Visa Waiver Pilot Program Information Form, prior to arriving at the port of entry, and must undergo screening at the port of entry by the INS. Form I-94W makes clear that the waiver traveler surrenders the right to an exclusion hearing.

9 FAM 41.2 N11.4 Round-Trip Ticket

(TL:VISA-164; 4-25-97)

For purposes of the VWPP, a round-trip ticket means any non-transferable ticket, valid for a period of not less than one year, which takes the traveler out of the United States to an onward destination, including foreign contiguous territory or adjacent island, if he or she is resident there. If the traveler is not resident in contiguous territory or adjacent islands, the ticket must transport him or her to a foreign location outside contiguous territory or adjacent islands.

9 FAM 41.2 N11.5 Port of Embarkation for United States

(TL:VISA-187; 03-30-1999)

Participants in the VWPP may embark for the United States from anywhere in the world, provided they arrive aboard a participating carrier.

9 FAM 41.2 N11.6 Aliens Transiting United States

(TL:VISA-33; 6-29-90)

Qualified travelers may elect to use the VWPP instead of TWOV when transiting the United States.

9 FAM 41.2 N11.7 Side Trips Permitted Within 90-day Limit

(TL:VISA-164; 4-25-97)

Travelers participating in the VWPP must make their initial entry into the United States aboard one of the participating carriers. After their initial entry into the United States, temporary departure to, and return from, Canada, Mexico or adjacent islands by car or other carriers is permitted, as long as the total stay (in the United States, plus contiguous territory and adjacent islands) does not exceed 90 days.

9 FAM 41.2 N11.8 Nationality and Passport Requirements

(TL:VISA-187; 03-30-1999)

a. The traveler's nationality, not place of birth, determines entitlement to participate in the VWPP. Passports must reflect the nationality of a participating country. British passports must reflect "BRITISH CITIZEN", or be annotated with the phrase "HOLDER HAS THE RIGHT OF ABODE IN THE UNITED KINGDOM."

b. Bearers of official and diplomatic passports can use the VWPP, provided they are entering the United States for a B visa purpose. If they are coming for a(n) A or G purpose, including a temporary assignment of less than 90 days, the appropriate visa must be stamped in the passport.

9 FAM 41.2 N11.9 Aliens Requiring Waiver of Ineligibility

(TL:VISA-164; 4-25-97)

Persons for whom a waiver of ineligibility is required must apply for and receive a visa; they are not eligible to participate in the VWPP. Persons covered by the blanket waiver of INA 212(a)(1) for mentally retarded individuals can participate in the VWPP, if otherwise qualified, and accompanied by a responsible adult; the blanket waiver will be noted on Form I-94, Arrival-Departure Record, at the port of entry.

9 FAM 41.2 N11.10 Travelers Not to be Discouraged from Seeking Visas

(TL:VISA-246; 03-27-2001)

a. Although use of the VWPP is encouraged, travelers availing themselves of it should be made aware of the risks involved and the surrendering of certain rights. Consequently, they should not be discouraged from seeking normal visa services.

b. *Consular officers must also ensure that the traveler meets the requirements for the VWPP. Just because the applicant is from a VWPP country, does not necessarily mean they do not require a visa.*

9 FAM 41.2 N11.11 Maintenance of Status

(TL:VISA-164; 4-25-97)

An alien admitted to the United States under the VWPP:

- (1) Is admitted as a visitor for business or pleasure for a period not to exceed 90 days;
- (2) May not engage in activities inconsistent with status as a visitor;
- (3) Is not eligible for an extension of temporary stay in the United States;
- (4) Is not eligible for adjustment of status to that of a lawful permanent resident alien (other than as an immediate relative as defined under INA 201(b) or under the provisions of INA 245(i)); and
- (5) Is not eligible for change of nonimmigrant status.

9 FAM 41.2 N12 Canadian Citizens Seeking Admission as Treaty Traders or Treaty Investors

(TL:VISA-164; 4-25-97)

During the United States-Canada Free Trade Agreement negotiations, it was recognized that the E visa classification is extremely technical and sometimes quite complex. All parties agreed that the visa process was the best way to accord this classification. 22 CFR 41.2(m) removes the visa exemption for Canadian citizens who seek to enter the United States as treaty traders/investors under INA 101(a)(15)(E). Such Canadian citizens must apply for an E visa at a U.S. embassy or consulate. [See 9 FAM 41.51 Regs/Statutes and 9 FAM 41.51 Notes.]

9 FAM 41.2 N13 Canadian Citizens Seeking Admission Under NAFTA

(TL:VISA-164; 4-25-97)

Citizens of Canada seeking admission to the United States under the provisions of the North American Free Trade Agreement (NAFTA) are exempt from the visa requirement, unless seeking classification under INA 101(a)(15)(E). [See also 9 FAM 41.59 and 9 FAM PART IV Appendix P, Services for INS - NAFTA.]